

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID FENTIMAN,

Plaintiff

v.

VULCAN MATERIALS COMPANY,

Defendants

CASE NO.

NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. § 1332

Defendant, Vulcan Materials Company respectfully files this Notice of Removal Pursuant to 28 U.S.C. § 1332 and Jury Demand, and in support thereof, would show unto this Honorable Court the following, to wit:

1. This matter arises out of an incident that occurred on December 3, 2021, in which Plaintiff alleges that Vulcan Materials Company alleged to have improperly loaded stone into his tractor trailer causing same to tip over onto its side trapping plaintiff inside and causing injuries to plaintiff. (A true and correct copy of Plaintiff's Complaint is attached hereto as Exhibit "A").

2. Pursuant to 28 U.S.C. § 1441, *et. seq.*, Defendant, Vulcan Materials Company, hereby removes this action from Pennsylvania Court of Common Pleas, Adams County, styled *David Fentiman v. Vulcan Materials Company, Adams County, 2022-S-983*, to the United States District Court Middle District of Pennsylvania.

3. This matter is removable based on the allegations in the Complaint establishing complete diversity of citizenship between all opposing parties as required by 28 U.S.C. § 1332. Specifically, the Complaint alleges Plaintiff David Fentiman, is a resident of Oxford, Pennsylvania, and by implication is a citizen of Pennsylvania and Defendant Vulcan Materials

Company is a business entity with offices located at 875 Oxford Avenue, Hanover, Pennsylvania but is a Delaware Corporation. Further, Vulcan Construction Materials, LLC, improperly plead as Vulcan Materials Company, is also a Delaware Corporation.

4. Removal is timely. Service of Plaintiff's Complaint upon Vulcan Materials Company was completed on October 18, 2022, and the matter is being removed within 30 days of completion of Service of Process on Vulcan Materials Company.

5. Venue is proper. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States District Court for the Middle District of Pennsylvania for purposes of removal because the pending state action was filed within this District.

6. All necessary defendants consent to removal. Defendant, Vulcan Construction Materials, LLC, improperly plead as Vulcan Materials Company, removes this case to federal court. As such, any required notice or consent is not necessary. Thus, all necessary and served parties have provided consent for removal of this action to federal court pursuant to 28 U.S.C. § 1446(b) and that such consent is timely pursuant to 28 U.S.C. §§ 1441(b) and 1446(b).

7. In sum, this action is removable to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. 1441(a) because there is complete diversity of citizenship between the parties (Plaintiff and Defendants).

8. A copy of all pleadings and orders in the state court action, including Plaintiff's Complaint is filed with this Notice.

9. Defendant, Vulcan Construction Materials, LLC, improperly plead as Vulcan Materials Company, is contemporarily providing Notice of Removal to the state court in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, based on the foregoing, Defendant, Vulcan Construction Materials, LLC, improperly plead as Vulcan Materials Company, hereby removes this action from the Pennsylvania Court of Common Pleas, Adams County, to the United States District Court for the Middle District of Pennsylvania.

Respectfully Submitted,

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

BY: Gregory M. Mallon, Esquire
GREGORY M. MALLON, ESQUIRE
Attorney Identification No.:311451
One Commerce Square
2005 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 569-2800
(215) 569-1606 (Fax)
Gmallon@zarwin.com

DATED: 10/25/22

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID FENTIMAN,

Plaintiff

v.

VULCAN MATERIALS COMPANY,

Defendants

CASE NO.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of October, 2022 a copy of the foregoing Notice of Removal and accompanying documents was sent to the following via e-mail:

Thomas P. Lang, Esquire
Law Offices of Dale E. Anstine, P.C.
Two West Market Street
P.O. Box 952
York PA 17405
tlang@4anstine.com

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

**BY: ~~Gregory M. Mallon, Esquire~~
GREGORY M. MALLON, ESQUIRE**
Attorney Identification No.: 311451
One Commerce Square
2005 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 569-2800
(215) 569-1606 (Fax)
Gmallon@zarwin.com

DATED: 10/25/22

EXHIBIT “A”

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Adams

County

For Prothonotary Use Only:

Docket No:

2022-SU-983

FILED
ADAMS COUNTY, PA
PROTHONOTARY
STAMP
2022 OCT 11 AM 10:43

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

David Fentiman

Lead Defendant's Name:

Vulcan Materials Company

Are money damages requested? ☒ Yes ☐ NoDollar Amount Requested: ☐ within arbitration limits
☒ outside arbitration limits
(check one)Is this a *Class Action Suit*? ☐ Yes ☒ NoIs this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Thomas P. Lang, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☒ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

- ☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

_____**REAL PROPERTY**

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

- ☐ Zoning Board
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
☐ Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

FILED
ADAMS COUNTY, PA
PROTHONOTARY
2022 OCT 11 AM 10:43

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

| | | |
|---------------------------------|---|----------------------------|
| DAVID FENTIMAN | : | NO. 2022-S- 983 |
| Plaintiff | : | |
| | : | |
| v. | : | CIVIL ACTION - LAW |
| | : | |
| VULCAN MATERIALS COMPANY | : | |
| Defendant | : | JURY TRIAL DEMANDED |

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against claims set forth in the foregoing pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a default judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. **YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.**

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service of the
Adams County Bar Association
111-117 Baltimore Street
Gettysburg PA 17325
(717) 334-6781 x.213

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

| | | |
|---------------------------------|---|----------------------------|
| DAVID FENTIMAN | : | NO. 2022-S- 983 |
| Plaintiff | : | |
| | : | |
| v. | : | CIVIL ACTION - LAW |
| | : | |
| VULCAN MATERIALS COMPANY | : | |
| Defendant | : | JURY TRIAL DEMANDED |

AVISO

USTED HA SIDO DEMANDADO EN LA CORTE. Si usted desea defenderse de las quejas expuestas en las paginas siguientes, debe tomar accion dentro de veinte (20) dias a partir de la fecha en que recibio' la demanda y el aviso. Usted debe presentar comparecencia escrita en persona o por abogado y presentar en la Corte por escrita sus defenses o sus objections a las demandas en su contra.

Se ha avisa que si no se defiende, el caso puede proceder sin usted y la Corte puede decidir en su contra sin mas aviaso o notificacio'n por cualquier dinero reclamando en la demanda o por cualquier otra queja o compensacio'n reclamados por el Demandandante. **USTED PUEDE PERDER DINERO O PROPIEDADES O OTROS DERECHOS IMPORTANTES PARA USTED.**

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI USTED NO TIENE O CONOCE UN ABOGADO, VAYA P LLAME A LA OFICINA EN LA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGULAR DONDE PUEDE OBTENER ASISTENCIA LEGAL.

Lawyer Referral Service of the
Adams County Bar Association
111-117 Baltimore Street
Gettysburg PA 17325
(717) 334-6781 x.213

FILED
ADAMS COUNTY, PA
PROTHONOTARY
2022 OCT 11 AM 10:43

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

| | | |
|---------------------------------|---|----------------------------|
| DAVID FENTIMAN | : | NO. 2022-S- 983 |
| Plaintiff | : | |
| | : | |
| v. | : | CIVIL ACTION - LAW |
| | : | |
| VULCAN MATERIALS COMPANY | : | |
| Defendant | : | JURY TRIAL DEMANDED |

COMPLAINT

1. The Plaintiff is an adult individual residing at 16C Lincoln Way E, New Oxford, Pennsylvania, 17350.
2. The Defendant is a business entity with offices located at 875 Oxford Avenue Hanover, Pennsylvania 17331.
3. On December 3, 2021, Plaintiff was the operator of a tractor and a dump trailer bearing Pennsylvania registration HHF723 owned by and used with the permission of Hokes Mill Farms LLC.
4. On December 3, 2021, Plaintiff was a business invitee at Defendant's business.
5. On December 3, 2021, at approximately 10:45 a.m., an employee of the Defendant loaded a load of limestone on Plaintiff's trailer.
6. On December 3, 2021, Plaintiff was delivering the load of limestone to Lehigh Portland Cement located at 537 Evansville Road, Fleetwood, Pennsylvania.
7. While dumping the load of limestone, the load shifted and caused the tractor and trailer to tip over on its side resulting in Plaintiff being trapped inside the tractor, causing injuries and damages to Plaintiff.

8. This accident occurred as a result of the negligence of the Defendant and was due in no manner to any act, or failure to act, on the part of the Plaintiff.

9. The negligence of the Defendant's employee consisted of the following:

- a) Failing to properly load stone in Plaintiff's vehicle; and
- b) Failing to exercise reasonable care when loading stone in Plaintiff's vehicle when the Defendant knew, or should have known, how to properly load the trailer.

10. At all times relevant hereto, Defendant's employees/manager were acting in the course and scope of their employment with Defendant, Vulcan Materials Company, under the control of Defendant, Vulcan Materials Company, and in the furtherance of the business interests of Defendant, Vulcan Materials Company.

11. Defendant, Vulcan Materials Company, is vicariously liable for the negligence of Defendant's employees.

12. As a result of the negligence of the Defendant, the Plaintiff suffered serious and permanent injuries, including but not limited to, fractured right clavicle, four (4) fractured ribs, head injury, torn right rotator cuff, and a severe shock to his nerves and nervous system.

13. As a result of the negligence of the Defendant, the Plaintiff incurred medical bills and expenses for the injuries he has suffered, and he will continue to incur medical expenses in the future.

14. As a result of the negligence of the Defendant, the Plaintiff has suffered, or may suffer, a severe loss of his earnings and impairment of his earning capacity and the loss of income and impairment of earning capacity will, or may continue in the future.

15. As a result of the negligence of the Defendant, the Plaintiff has undergone, and in the future, may undergo, great mental and physical pain and suffering, mental anguish and humiliation, loss of life's pleasures, scarring and disfigurement, and a severe limitation in his pursuit of daily activities, all to his great loss and detriment.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment against the Defendant.

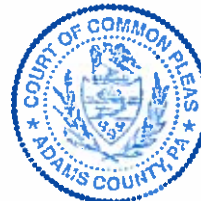
**RESPECTFULLY SUBMITTED:
LAW OFFICES OF DALE E. ANSTINE, P.C.**



Thomas P. Lang, Esquire
Law Offices of Dale E. Anstine, P.C.
Two West Market Street
P.O. Box 952
York PA 17405
Attorney I.D. #65481
tlang@4anstine.com

Oct. 11th 2022 This being a true
and attested copy taken from and compared
with the original.

Attest:


Deputy Prothonotary

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Law Offices of Dale E. Anstine, P.C.

A handwritten signature in black ink, appearing to read 'T. Lang', is written over a horizontal line.

Thomas P. Lang, Esquire

Counsel for Plaintiff


I.D. 65481

tlang@4anstine.com

VERIFICATION

I HEREBY VERIFY that the information set forth in the foregoing **Complaint** is true and correct to the best of my knowledge, information and belief. I understand that any false statements contained herein are subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 10-6-2022


David Fentiman

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

BY: Gregory M. Mallon, Esquire
Attorney Identification No.: 311451
One Commerce Square
2005 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 569-2800
(215) 569-1606 (Fax)
gmallon@zarwin.com

Attorneys for Defendant,
Vulcan Materials Company

DAVID FENTIMAN,

Plaintiff

v.

VULCAN MATERIALS COMPANY

Defendants

**COURT OF COMMON PLEAS
ADAMS COUNTY**

2022-S-983

NOTICE OF REMOVAL TO FEDERAL COURT

Please take notice that Defendant, Vulcan Materials Company, has timely filed with the United States District Court for the Middle District of Pennsylvania, their Notice of Removal of the above-styled and referenced action pending in the Pennsylvania Court of Common Pleas, Adams County pursuant to 28 U.S.C. §§1332 and 1441.

A true and correct copy of the Notice of Removal is attached hereto as Exhibit "A" and is incorporated by reference as if fully set forth herein.

The filing of the Notice of Removal in the United States District Court, together with the filing of this Notice, effects the removal of this action, and this Court may

proceed no further with this action.

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

BY: Gregory M. Mallon, Esquire

GREGORY M. MALLON, ESQUIRE

Attorney Identification No.:311451

One Commerce Square

2005 Market Street, 16th Floor

Philadelphia, PA 19103

(215) 569-2800

(215) 569-1606 (Fax)

Gmallon@zarwin.com

Date:10/24/22

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of October, 2022 a copy of the foregoing Notice of Removal and accompanying documents was sent to the following via e-mail:

Thomas P. Lang, Esquire
Law Offices of Dale E. Anstine, P.C.
Two West Market Street
P.O. Box 952
York PA 17405
tlang@4anstine.com

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

BY: Gregory M. Mallon, Esquire
GREGORY M. MALLON, ESQUIRE
Attorney Identification No.:311451
One Commerce Square
2005 Market Street, 16th Floor
Philadelphia, PA 19103
(215) 569-2800
(215) 569-1606 (Fax)
Gmallon@zarwin.com

DATED: 10/24/22

EXHIBIT “A”

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

By: Theodore M. Schaer, Esquire

Attorney ID: 49580

By: Gregory M. Mallon Esquire

Attorney ID: 311451

One Commerce Square

2005 Market Street, 16th Floor

Philadelphia, PA 19103-3638

Phone: (215) 569-2800

tmschaer@zarwin.com

gmallon@zarwin.com

Attorneys for Defendant,

Vulcan Materials Company

DAVID FENTIMAN,

Plaintiff

v.

VULCAN MATERIALS COMPANY

Defendants

**COURT OF COMMON PLEAS
ADAMS COUNTY**

2022-S-983

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of Defendant, Vulcan Materials Company in the above-captioned matter.

**ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.**

By: /s/ Theodore M. Schaer

Theodore M. Schaer, Esquire

Attorney for Defendant,

Vulcan Materials Company

By: /s/ Gregory M. Mallon

Gregory Mallon, Esquire

Attorney for Defendant,

Vulcan Materials Company

DATED: 10/20/22